142

Supreme Court, U.S.
FILED
09-462 OCT 16 2009
OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

SAMUEL H. THOMAS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent,

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SAMUEL THOMAS, ESQ.
209 North Walnut Street
Tallulah, Louisiana 71282
318-574-1953

QUESTIONS PRESENTED

1. Whether the long standing Supreme Court Cases consistently holding that a failure to pay a tax in the good faith belief that the taxes not legally owing, is "willful" lowering the burden of proof by a jury instruction of "willful blindness" defeating the element of specific intent..

2. Whether the United States Circuit Court of Appeals are on the jury instruction "willful blindness," given in tax offenses where the tax payer charge are specific intent crimes that require the taxpayer to have acted "willfully".

3. Whether as a matter of law, there was insuffi cient evidence to support the jury verdict where the taxpayer relied on the advice of a tax professional.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

TABLE OF CONTENTS ii

TABLE AUTHORITIES iv

OPINIONS BELOW viii

JURISDICTION viii

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED viii

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE WRIT..... 5

I. WHETHER THE LONG STANDING SUPREME COURT CASE CONSISTENTLY HOLDING THAT A FAILURE TO PAY A TAX IN THE GOOD-FAITH BELIEF THAT IS NOT LEGALLY OWING IS NOT "WILLFUL"A JURY INSTRUCTION OR "WILLFUL BLINDNESS" DEFEATING THE LEGAL REQUIREMENT OF SPECIFIC INTENT.....5

II. WHETHER THE UNITED STATES CIRCUIT OF APPEALS ARE DIVIDED ON THE JURY INSTRUCTION "WILLFUL BLIND NESS," GIVEN IN TAX OFFENSES WHERE THE TAX PAYER CHARGES ARE SPECIFIC INTENT CRIMES THAT REQUIRES THE TAX PAYER TO HAVE ACTED W I L - FUL.....10

III. WHETHER AS A MATTER OF LAW THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT THE JURY VERDICT WHERE THE TAX PAYER RELIED ON THE ADVISE OF A TAX PROFESSIONAL.....16

CONCLUSION.....29

APPENDIX.....30

The opinion of the United States of Appeals for the Fifth Circuit, Dated July 20, 2009.....App. I

TABLE OF AUTHORITIES

Bursten v. United States
395 F. 2d 976 (1968).....21

Cheek v. United States
498 U.S. 192 (1991).....6, 12

Davis v. Commissioner
184 F. 2d 86 11

Felton v. United States
96 U.S. 699 21

Jackson v. Virginia
443 U.S. 307.....12

Kolaski v. United States
362 F. 2d 847 (1966) 14

Lucas v. American Code Co.
380 U.S. 445, 505 ct. 202.....16

Lurding v. United States
179 F. 2d 415, 422.....7, 20

Sharon Herald Co. v. Granger
195 F. 2d 890, 895 (1952)..... 16, 20

Spurr v. United States
174 U.S. 728.....21

United States v. Alvarado
838 F. 2d 311, 314 (9th Cir. 1987)....10

United States v. Beckett
724 F. 2d 855, 856 (1984) 10

United States v. Bishop
291 F. 3d 1100.....20

United States v. Bishop
93 S. Ct. 2008 (1933).....13

United States v. Callahan
588 F. 2d 1078 19

United States v. Conner
537 F. 3d 480 (2008) 7

United States v. Curtis
107 U.S. 671 (1953) 16

United States v. Debrow
346 U.S. 374 (1953).....17

Unites States v. Enmans
410 U.S. 396.....14

United States v. Gainey
308 U.S. 63 (1972) 21

United States v. Grey
105 F. 3d 956 (1997) 7, 8

United States v. Harris
68 Ct. 331 14

United States v. Hilliard
31 F. 3d 1509 (1994).....10

United States v. Lopez
939 F. 2d 1405 (10th Cir. 1991) 11

United States v. Lane
303 F. 2d 1 (1962) 17

United States v. Levy
533 f. 2d 969 (1976).....17

United States v. Lara-Velasquez
919 F. 2d 946, 951 5th Cir. (1990).8, 10

United States v. Louis
475 F. 2d 571 14

United States v. Mapelli
971 F. 2d 284.....8

United States v. Murdock
290 U.S. 389.....6, 8

United States v. Perez-Padilla
846 f.2d 1182, 1183 (1988).....10

United States v. Ramsdell
487 f. 2d 130 15

United States v. Slutsky
487 F. 2d 843.....15

34 United States v. Sullivan
68 S. Ct. 531 14

35 Watkins v. United States
77 S.Ct. 1173.....14

36 Winters v. New York
333 U.S. 507 14

CONSTITUTION, ACTS, RULES AND STATUTES

U.S. Const.
Amend V vii

26 USC
£ 7206 (1)
£ 7201.....vii

Federal Rule of Criminal Procedure
Rule 29(a).....vii

Internal Revenue Code
5, 8.4 (2).....14

Mississippi Rule of Professional Con
duct 46(b).....3

Louisiana Rule of Professional Conduct
Art. XVII £5.5.....3

Revenue Procedure
64-25 Cases 12.....15

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported opinion United States v. Samuel Thomas No. 08-30567 (5th cir. 2008) and is set forth at App.1.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on July 20, 2009 (App.1) this court has jurisdiction pursuant to 28 U.S.C. £ 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in Pertinent part: nor be deprived of life, liberty, or property, without due process of law;

The tax fraud statute, 26 U.S.C. £ 7206(1) provides in pertinent part:

Willfully makes and subscribes any reform, statement, or other documents which contain or are verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material matter...

The attempt to evade or defeat tax 26 U.S.C. £ 7201 provides, in pertinent part:
Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment there of shall, in addition to other defeat any tax imposed by this title or the payment there of shall, in addition to other penalties provided by law, be guilty of a felony...

Fed. R. Crim. P. rule 29(a) provides, in pertinent-part:

After the government closes its evidence the court on the defendant's motion must enter a judgment of acquittal of any offense for which the evidence is in sufficient to sustain a conviction...

STATEMENT OF THE CASE

The taxpayer, Samuel Thomas, was an attorney licensed to practice in the State of Louisiana. He practiced in Louisiana for thirty-two years, except during the period of November 27, 1997 through August 24, 1998. During this period he was suspended from the practice of law by the Louisiana Supreme Court for a 1994 conviction or failure to file federal income tax returns.

While housed at the halfway house and working at the office of his lifelong friend, Charles Jones, Esq., Mr. Thomas met Louis Bradley, CPA (Tr., pp. 666-668). Mr. Thomas discussed his problems with Senator Jones and he recommended Louis Bradley. Upon the recommendation of Senator Jones, Louis Bradley began working as an accountant for Mr. Thomas (TR., pp. 667-668).

On June 6. 1996, Mr. Thomas resumed his practice at 209 North Walnut Street, Tallulah, Louisiana. Mrs. Matra Hamilton was employed as Mr. Thomas' secretary/bookkeeper. Mrs. Hamilton was responsible for handling the financial records. Her responsibility also included giving all records to Mr. Bradley to enable him to perform his job (Tr., p.669).

In effect, Mrs. Hamilton ran the office, as Mr. Thomas traveled daily to courthouses, practicing law throughout the area. Mrs. Hamilton died before trial (Tr. P. 669).

During this period, Mr. Thomas was ordered to pay $5800.00 for twelve months and to make a lump sum payment of 50,000 by November 15, 1997(G-Exhibit 3). Mr. Thomas met his obligation and upon meeting his obligation, he was suspended from the practice of law by the Louisiana Supreme Court on November 23, 1997 through August 24, 1998. (Tr.pp.673-675).

The focus of the prosecution was on a fee received by Mr. Thomas in the Wiley case. This case arose when an accident occurred in Clarksdale, Mississippi on October 12, 1995. While incarcerated in Talladega, Alabama, Mr. Thomas' wife Jacquelyn met Mrs. Wiley and subsequently contacted Mr. Thomas to help her. While in the halfway house Mr. Thomas began working in Senator Jones' law office. Once contacted by Mrs. Wiley, Senator Jones contacted Attorney Phillip Carby from Mississippi and he contacted Andrew Westerfield to handle the case.

In the "Wiley vs. Traditional Trucking, Inc.,"case. Mr. Thomas was not under contract with Mrs. Wiley, Senator Jones, Attorney Westerfield or Attorney Carby. Mr. Thomas did not file any motions,or interrogate, nor did he sign on the lawsuit (Tr., pp. 57-58)., Mr. Thomas did not attend any depositions, nor did he attend the mediation. (Tr. P.53

Under Mississippi Rule App. P. 46(b), a Louisiana Attorney is in violation by signing without obtaining a pro hac vice admission. Mr. Thomas did not apply for the pro hac vice admision. Louisiana attorneys are governed by the La. State Bar Ass'n, Art. XVII Section 5.5., Mr. Thomas did not violate the Louisiana Bar rules.

On August 24, 2006, Samuel H. Thomas was indicted along with CPA Louis Bradley in a six count indictment charged. The charges were conspiracy to defraud the United States government; two counts of making and subscribing returns with respect to both his 1999 corporate and personal returns; two counts of aiding and assisting in making and subscribing a false return.

On November 6, 2007, the trial commenced in Monroe, Louisiana, before the Honorable Robert James. On November 15, 2007 the jury returned a verdict of not guilty as to both defendants on the conspiracy charge. Mr. Bradley was acquitted on both substantive counts brought against him. Mr. Thomas was convicted on two counts of making and subscribing a false return and one count of tax evasion, on July 20, 2009 in the United States Court of Appeals for the 5th Circuit, the court Affirm Pursuant to Fifth Circuit Rule 47.5

REASONS FOR GRANTING THE WRIT

I. THE TAX OFFENSES CHARGED ARE SPECIFIC INTENT CRIMES THAT REQUIRE THE TAXPAYER TO HAVE ACTED WILFULLY,THE JURY INSTRUCTION OF "WILLFUL BLINDNESS" LOWERS THE BURDEN OF PROOF.

The court at the request of the government gave the following instruction to the jury:

> "You may find that a defendant had knowledge of a fact if you find the defendant deliberately closed his eyes to what would otherwise have been obvious to him. While knowledge on the part of the defendant cannot be established merely by demonstrating that the defendant was negligent, careless, or foolish. Knowledge can be inferred if the defendant deliberately blinded himself to the existence of a fact. I will now explain the remaining counts of the indictment and then explain the law applicable on those counts" (Tr., p. 1026).

The taxpayer timely objected to the deliberate blindness instructions. The deliberate ignorance instruction impermissibly diluted the otherwise heavy burden of the government.

The alleged tax violations required the government to prove beyond a reasonable doubt that Mr. Thomas acted "voluntarily and intended to violate a known duty". (Tr. pp. 1027, 11, 22-25). Indeed willfulness requires proof of a specific intent of the taxpayer to defraud or evade payment of taxes.

> "On certiorati, the United States Supreme Court vacated the Court of Appeals' Judgment and remanded the case for further proceedings. In an opinion by White J., joined by Rehnquist, Ch. J., and Stevens, O'Connor, and Kennedy, JJ., "It was held that (1) in a prosecution under §§ 7201 and 7203, for "willfully' attempting to evade federal income taxes and "willfully" failing to file federal income tax returns, (a) there is no requirement that a defendant's claimed good-faith belief must be objectively reasonable if the claimed belief is to be considered as possibly negating the Federal Government's evidence purporting to show a defendant's awareness of the legal duty at issue,

but (b) the defendant's view about the validity of the tax statutes are irrelevant to the issue of willfulness, and need to be heard by the jury; and (2) thus, for purpose of determining the willfulness under §§ 7201 and 7203, of defendant in the case at hand, (a) it was error, however incredible such claimed misunderstandings of and belief about the tax law might be, to instruct the jury not to consider the defendant's asserted belief that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code, but (b) it was not an error, regardless of whether the claims of invalidity were frivolous or had substance, to instruct the jury not to consider the defendant's claim that the tax laws are unconstitutional. Scalia, J., concurring in the judgment, expressed the view that (1) the Supreme Court's cases had consistently held that a failure to pay a tax in the good-faith erroneous belief in the unconstitutionality of a tax law is no defense, squarely reversed the long-established statutory construction."
Cheek vs. United States 498 U.S. 192, 112 L. Ed. 2d 617, 111 s Ct. 604, Decided January 8, 1991.

The fifth circuit in its opinion failed to address the Cheek Id. Ruling in light of the deliberate ignorance instruction Cheek Id.,states in (a) it was error, however incredible such claimed misunderstanding of a belief about the tax law might be, to instruct the jury not to consider the defendant's asserted beliefs that wages are not income and that he was not a taxpayer within the meaning of the Internal Revenue Code. A good-faith misunderstanding of the law or a good-faith belief that one is not violating the law negates willfulness, whether or not the claimed belief or misunderstanding is objectively reasonable. Statutory willfulness, which protect the average citizen from persecution for innocent mistakes due to the complexity of the tax laws. United States v. Murdock 290 U.S. 389, 78 L. Ed. 381, 54 S Ct. 223 is the voluntary, intentional violation of a knowledge duty.

C.P.A. Louis Bradley certified by the state of Louisiana was found not guilty on all charges against him (R. Doc. 48, p. 156). Bradley recommended filing an Offer-In-Compromise, he signed all documents except the 656 forms (Tr. P. 671). With respect to the false tax returns, on counts 4 and 5, Mr. Bradley prepared the returns, on counts 4 and 5, Mr. Bradley prepared the returns using a year end adjustment to arrive at the amounts due on both the corporate and personal returns. The tax information was provided by Matra Hamilton, the office manager. Mrs. Hamilton was Mr. Bradley's source of information, he dealt with her, not Mr. Thomas. Mr. Bradley acknowledged that he made errors.

In Murdock Id. The court recognized that: Congress did not intend that a person, by reason of a bona fide misunderstanding as to his liability for the tax, as to his duty to make a return or as to the adequacy of the records he maintained, shall be become a criminal by his mere failure to measure up to the prescribed standard of conduct.

Bradley's statement to the jury was he that he made errors on the income tax forms and the jury found him not guilty. Errors on tax forms are not acts of illegal conduct. No presumption of willfulness may be drawn from the act of filing an inaccurate tax return, for many taxpayers do that innocently. Lurding v. United States, 179 F. 2d 417, 422.

In the case of United States v. Connor 537 F. 3d 480 5th cir. July 28, 2008 states, " the deliberate ignorance instruction presents the danger that a jury will convict a defendant on the basis of the lesser mens rea of negligence-pushing the defendant for what he should have known. {Therefore} circumstances rarely warrant the use of this instruction". United States v. Grey 105 f. 3d 956, 967 (5th cir. 1997).

A court should not give a deliberate ignorance instruction when the evidence shows only that the defendant should have been aware of the illegal conduct". United States v. Lara-Velasquez 919 f. 2d 946, 951 (5th Cir. 1990).

A jury charge must be legally accurate and factually supported by evidenced. United States v. Grey Id. This court should visit the deliberate ignorance jury instruction, clarifying when this instruction should be used as it relates to tax cases, in light of Congress intent announced in United States v. Murdock surp....

II. THIS COURT SHOULD DECIDE WHETHER THE CIRCUIT COURT ARE DIVIDED ON THE JURY INSTRUCTION DELIBERATE IGNO RANCE IN TAX CASES WHICH DENIES DUE PROCESS

In the case, United States v. Mapelli 971 F 2d 289 , the ninth circuit states.
This court reversed defendant's conviction for tax evasion because a deliberate ignorance instruction was improperly given to where the defendant's business activities were very limited.

A deliberate ignorance instruction, sometimes called a jewell instruction, is appropriate only when the defendant purposely contrives to avoid learning all the facts or when a drug courier avoids looking in a secret compartment he sees in the trunk of a car, because he knows full well that he is likely to find drugs there. It is not enough that the defendant was mistaken, recklessly disregarded the truth or negligently failed to inquire. The instruction enables the jury to deal with willful blindness where a person suspects a fact, realizes its probability, but refrains from obtaining final confirmation in order to be able to deny knowledge if apprehended. The state of mind differs from positive knowledge only so far as necessary to encompass a calculated effort to avoid the sanctions of the statute while violating its substance. The deliberate ignorance instruction is inappropriate where the facts point to actual knowledge rather than deliberate ignorance, and should otherwise be used sparingly. It is not a routine instruction for case in which knowledge is at issue.

The instruction is inappropriate where the evidence could justify one of two conclusions, either that the defendant had knowledge, or that the defendant did not, but not a third conclusion, that the defendant deliberately closed her eyes to avoid confirming the existence of a fact that she knew.

The fifth circuit court of appeal reasoned that Mr. Thomas has first-hand knowledge that his personal and gross exceeded the reported gross income. Regarding corporate liabilities, Mr. Thomas clearly knew of the Wiley's case settlement and of his fee for $647,193, an amount exceeding his firm's reported gross income of $436,850 (reason for judgment, Fifth Cir. p.10. Deliberate ignorance is not a routine instruction for cases in which knowledge is at issue.

In United States v. Callahan 588 F. 2d 1078, as it relates to jury instructions trial court properly instructed jury that the defendant could not avoid criminal culpability merely by deliberately closing his eyes to tax avoidance scheme, if such scheme would have been obvious. The Court further stated, a false return is not necessarily a fraudulent one. It may be merely incorrect, due to negligence or some other cause lacking intent, such as an honest mistake. Fraud is never presumed but must be determined from clear and convincing evidence, considering all the facts and circumstances.

In United States v. Lara-Velasquez, 919 F. 2d 946, 951 5th Cir. 1990) the Fifth Circuit held that an instruction on deliberate ignorance was supported by the evidence. The deliberate ignorance instruction, however, is not appropriate in all criminal cases.

Because the instruction permits a jury to convict a defendant without a finding that the defendant was actually aware of the existence of illegal conduct, the deliberate ignorance instruction poses the risk that a jury might convict the defendant on a lesser negligence standard-- the defendant should have been aware of the illegal conduct. United States v. Alvardo, 838 F. 2d 311, 314 (9th Cir. 1987), cert. denied, 487 U.S. 1222, 108 S. Ct. 2880, 101 L. Ed. 2d 915 (1988); United States v. Beckett, 724 F. 2d 855, 856 (9th Cir. 1984).

Accordingly, the district court should not instruct the jury on deliberate ignorance when the evidence raises only the inferences that the defendant had actual knowledge or no knowledge at all of the facts in question. United States v. Perez-Padilla, 846 F. 2d 1182, 1183 (9th Cir. 1988). If the choice is simply between a version of the facts in which the defendant had actual knowledge, and one in which the defendant was no more negligent or stupid, the deliberate ignorance instruction is inappropriate. Lara -Velasquez, surp.. The tenth cir. in United States v. Hillard 31F. 3d 1509 (August 3, 1994).

Defendant appealed the convictions and sentence for bank fraud and related crimes adjudged against him in the United States District court for the District of Colorado.

The defendant's conviction for bank fraud and other crimes were reversed. Because it was an error to use deliberate ignorance instruction based on proof of a civil violation that the defendant committed in reliance on the advice of professional counsel.

Use of a deliberate ignorance instruction is rarely appropriate because it is a rare occasion when the prosecution can present evidence that the defendant deliberately avoids knowledge. The use of a deliberate ignorance instruction is appropriate only when evidence is presented showing the defendant purposely contrives to avoid learning the truth. United States v. de Francisco Lopez, 939 F. 2d 1405, 1409 (10th cir. 1991).

> The 10th cir., August 1950 in Davis v. Commissioner, 178 F. 2d 769 states, "The responsibility of filing a return is that of the taxpayer, but a failure to file a correct return does not constitute fraud. Fraud implies intentional wrong doing, and a sinister motive.It is never imputed or presumed, and the courts should not sustain findings of fraud upon circumstances which at the most create only suspicion. To hold a taxpayer guilty of fraud, who without actual knowledge that a return is false, and after a full disclosure to the expert preparing the same, would be untenable."

Bradley was hired as Mr. Thomas' C.P.A. in and around February 1996. Mrs. Hamilton was instructed to provide all financial information to Mr. Bradley. It was her responsibility to write check to pay all bills and to code all checks.

The coding of the checks would allow Mr. Bradley to place them in the appropriate place in the journal. Mr. Thomas was not included in this process, he only saw the final product, the tax return. (Tr.,p 7081 Tr. P. 709, 1.3; p, 709, 11, 11-160.

The government concedes that Mr. Thomas provided Mr. Bradley with all of his bank statements (5th cir., Opinion, p. 4).
The jury instruction of deliberate ignorance in tax casers are not applied uniformly in all circuits. The fifth court of appeals refuse to address the ruling in Cheek v. United States III s. Ct. 604, 498 U.S. 1921, 112 Ed. 2d 617 (1991.

III. THE JURY VERDICT WAS NOT BASED ON SUFFICIENT EVIDENCE WHERE THE TAXPAYER RELIED ON TAX PROFESSIONAL, VIOLATING TAXPAYER'S DUE PROCESS RIGHT

Jackson v. Virginia 443 U.S. 307, 61 L. Ed 2d 560, 99 s. ct 278 Evidence which has tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence (that is 'relevant' evidence) cannot, by itself, rationally support a conviction of a crime beyond a reasonable doubt, as is required by due process.

On review of the sufficiency of the evidence to support a criminal conviction, the critical inquiry is not simply whether the jury was properly instructed, but also whether the recorded evidence can reasonably support a finding of guilt beyond a reasonable doubt. This inquiry does not, in preserving the fact finder's role as a weigher of the evidence, require a court to ask itself whether it believes that the evidence at trial established guilt beyond a reasonable doubt. The relevant question being whether, after viewing all the evidence in the light must favorable to the government, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

A

Evidence was presented by the government that the taxpayer was obviously aware of the likelihood of a settlement in the Wiley Case and should have reported it to the IRS agent on the 433-A form signed by Mr. Bradley. On form 433-A of the Collection Information Statement for Individuals, question 19 reads as follows:

> "Other information relating to your financial condition. If you check the, yes box, please give the date and explain on page 4, additional information or comments
>
> a. Court proceedings X Yes ___ No
>
> (e) Anticipated increase
> Income ___ Yes X No

Question nineteen on form 433A is fundamentally ambiguous, coupled with the fact that the IRS agent Mike Pritchard, had not met the taxpayer before the trial. Therefore, Mr. Pritchard did not explain the question to the taxpayer (Tr. P. 216), not withstanding the 433A form is for personal income.

The United States Supreme Court stated in U.S. v. Levy 533 F. 2d 969;(1976). If we have only to look to the unadorned words or "document" not difficulty, at least as to the meaning of the statute would be involved, but the problem is not that simple. In Section 7206 (1), a case involving an income tax return, the Supreme Court, quite recently, has said, we continue to recognize that context is important in the quest for the word's meaning United States vs. Bishop 93 S. Ct. 2008.

When we come to the statute, we are reminded that it is a perjury statute and is one the most serious offenses known to the law. See United States vs. Louis 475 f. 2d 571; Koloski vs. Unites States 5th Cir. 1966 362 f. 2d 847.

The Supreme court, as most properly it should have, repeatedly warned that men of common intelligence cannot be required to guess at meaning of a panel enactment. Winters vs. People of the State of New York 333 U.S. 507, 68 S. Ct.665; Watkins vs, United States 7777 S. Ct. 1173; United States vs Harris, 74 S. Ct. 808; United States vs. Sullivan 68 s. ct. 331, and many otherscriminal statutes must be strictly construed and any ambiguity must be resolved in the form of lenity. United States vs. Enmons 410 U,S. 396, 93 s, Ct. 1007, 36 L. Ed. 379.

B

The Government knew about the Wiley case from information submitted by Mr. Thomas. It is clear that Mike Pritchard did not investigate Mr. Thomas' information on the 433(A), 433(B) or any other information provided to the United States Government.

The Government introduced into evidence a letter addressed to AYSA, C. Mignonne Griffin, carbon copy to Judge Tucker Melancon, Mr. Vernon L. Royster, S. Special Function, A.U.S.A. Attorney, Robert A. Trall and Probation Officer, Danny Sorey, dated August 7, 1997.

The letter stated in part the following:

> "Finally, Mr. Thomas with his probation officer, Mr. Danny Sorey, was informed that Mr. Sorey has no objection to a continuance of this matter. Obviously, time is of the essence and I would have been in touch with you earlier concerning continuance of this matter, but we were of the opinion that Mr. Thomas was going to settle the case in Clarksdale, Mississippi prior to the court date and have the amount to pay".

Awaiting your call, I remain

Sincerely,

s/E/Roland Charles
E. ROLAND CHARLES" (G-E1)

The Government investigated all "leads" furnished by the taxpayer. United States v. Slutsky, 487 F. 2d at 843; United States v. Ramsdell, 487 F. 2d 130.

The Government failed to investigate the Wiley lead provide by defendant through his Attorney Roland Charles (G.E. 17). The critical question is whether the investigation was sufficient. The failure to do a thorough investigation by IRS Agent, Mike Prichard is a violation of Thomas' due process rights.

C

It is uncontested that the Wiley case fee arrangement was on a contingency basis. It is uncontested that the attorney had to win at trial or settle to collect any payment. The United States Supreme Court has stated that a mere contingent claim, especially a contested one, whether of loss or gain, may never be sustained or realized, it is too uncertain to be considered in making up an income tax return Lucas v. American Code Co. 280 U.S. 445, 50 s. Ct. 202.

The Government is alleging that an offer by one company that was not excepted because of a condition to drop all other claims, was in fact a one million dollar settlement. This is clearly in error when a summary judgment was granted to collect on this offer in July 1999.

Attorney Phillip Carby, a Government's witness, testified that a vehicle entered a four lane highway in the path of an on coming eighteen wheeler; liability was contested and this wasn't a sure-fire thing.

There was a risk to the lawyers in terms of expenses and their time. This was a contested lawsuit, a fight to the finish. The accident occurred in 1995 and continued for three to four years. (Tr. P. 25).

It is also uncontested that Louis Bradley, CPA signed the 433(A) and 433(B) forms which are under the penalties of perjury. The IRS agent, Mike Pritchard, the agent handling the Offer-In-Compromise never met the taxpayer (Tr. P. 216).

Moreover, since Forms 433 A & B are perjury documents, the party taking the statements must have the authority to take that particular statement and not some other. United States vs, Levy 533 f. 2d 969, (5th cir. 1976) United States vs. Curtis 107 U.s. 671, 672, S. Ct. 507, 508,27L. Ed. 534 (1882); United States vs. Debrow 346 U.S. 374, 74 S. Ct. 113, 98 L. Ed. 92 (1952).

The 433 (A&B) forms were signed in 1998 by Louis Bradley, CPA and he went over these forms with Thomas in November, 1997. The 433 (A &B) forms were signed in 1998 by Louis Bradley, CPA, (Government Exhibit 7-8).

He inquired of information from Thomas concerning the Offer-In-Compromise in November, 1997. Mr. Bradley did not inform Mr. Thomas of the 433 (A & B) that he signed and undated April and September 23, 1998, nor did he seek additional information for these forms.

The Offer-In-Compromise is a contract and cannot be changed without approval of both parties. The 433 (A&B) forms are an addendum to the 656 Offer-In-Compromise contract. On the Offer-In– Compromise item six states you must include a complete financial statement, i.e. form 433 (A) and/ or form 433 (B).

The Court stated in U.S. v. Lane 303 Fed 2d 1.4 (5th Cir. 1962) that it has long been settled that an agreement compromising unpaid taxes is a contract and, consequently, that is governed by the rules applicable to contracts generally. Internal Revenue Agent, Mike Prichard, stated at trial that he altered dates, he also testified that he added and undated forms 433 (A&B) without the signature of the taxpayer or through his power of attorney held by Louis Bradley, CPA. This is a violation of contract law performed by the IRS agent.

D

The Court states in its reason for denying Judgment of Acquittal that:

Thomas contends that Government's evidence is insufficient to support the jury's verdict as to counts 2 and 3 because it is inconsistent with the jury's acquittal of both defendants on the conspiracy count. According to Thomas, "the grammar of the charges in the substantive counts (2 and 3) were that Thomas' co-dependant and CPA Bradley, made fraudulent year ending adjusting journal entries which materially underestimate the income reported on the 1999 income tax returns for Thomas personally and for the Law Office of Samuel H. Thomas, APLLC.

The IRS had a new rule at the time of trial requiring forms 433A and 433B, Collection Statement for Businesses and Individuals shall be signed by the taxpayer because they are made "under penalty of perjury." 5.8 4(2) since Collection Information Statements (C150 require certification under penalty of perjury the taxpayer (s) must personally sign forms 433 (A) and/or 433(B)."

The Court in its ruling denied Judgment of Acquittal notes that Louis Bradley relied on a defense of incompetence. (Ruling, p.4). The writing on all forms 656, 433A and 433B is that of IRS agents and Louis Bradley, including the date, except Form 656, dated November 25, 1997. (Thomas, E-5)

Closing agreements executed by District Director, in Revenue Procedure 64-24 cases should follow these procedures. Revenue Agent did not abide by the department's rules denying the taxpayer due process.

Erasures and Alterations.

1 The agreement should not contain material erasures of significant matter. Erasures, when not critically located in key words or amounts, do not preclude acceptance on an agreement. The nature and extent of the erasures will be considered in determining whether they preclude acceptance of the agreement.

2 If after receipt of a signed closing agreement from a taxpayer and addition or correction is necessary, a change may be made in handwriting (legible script or printing by pen) by the taxpayer (or authorized representative signing the closing agreement, who should date and initial the changed page adjacent to the change.

3. If a new page must be substituted in an agreement or more that one page already signed by or for the taxpayer, he (or his authorized representative signing the agreement) should reflect his dated initials at the bottom of the new page, unless it is the page containing the signatures of the parties. In the latter case, his dated initials should be entered at the bottom of all other pages.

A defendant claiming good-faith reliance on the advice of a tax professional as a defense to willfulness in cases of tax fraud and evasion must have disclosure of all relevant information to that tax professional. United States vs. Bishop 291 F 3rd 1100.

Matra Hamilton wrote all business checks on the Law Office and clients accounts. She would give all bank statements to Mr. Bradley and write payroll checks. It was her duty to state on each check the purpose of the check. (T.T.P. 814). Mr Bradley, in his bookkeeping responsibilities, would place the checks in personal , business, or client category.

Mr. Bradley's business and home is in Monroe, Louisiana, approximately sixty miles from Tallulah. Thomas spent a great deal of time in court, leaving the accounting and bookkeeping matters to Hamilton and Bradley, (T.T. pp. 818, 824, 829).

Thomas provided the tax preparer, a CPA, that handled his books and taxes since 1996 all information. He instructed Hamilton to send him all back statements. Thomas trusted Bradley and Hamilton to meet all tax regulations. Based on trust, he signed that which was given to him by his employees. He did not examine the books or the tax returns. Speculations and intuition cannot be substituted for proof. This is so even on the civil side in tax cases, where the burden of proof upon the government is less than that which prevails in criminal tax cases, Sharon Herald Co. vs. Granger, (3 Cir. 1952) 195 F. 2d 890, 895.

Moreover, this court and others have already made it clear that reliance upon the conduct of employees in good-faith is not a punishable event. In Davis Id., the commission argues that the reported income shown by the returns was so small as compared with the actual income, and certain deductions were so flagrant that the taxpayer must have known that their returns were understated. Because of that knowledge there was an intent on the taxpayer part to evade taxes.

The Court states, " with this we cannot agree." Louis Bradley, CPA, testified that he made errors in bookkeeping in several year-ending adjusting journal entries (Tr. P. 836).

A defendant may rebut the government's proof of willfulness by establishing good-faith reliance on a qualified accountant after full disclosure of tax-related information. Bursten v. United States 395 F. 2d 976, 981, 95th cir. 1968) cert. denied 409 U.S. 843 L. Ed. 2d 83 (1972).

It is improper to charge a taxpayer with conclusive knowledge of the contents based on the signature alone. United States v. Gainey 308 U. S. 63, 85 S. ct. 754, 13 L. Ed. 2d 658 (1972). No presumption of willfulness may be drawn from the acts of filing an inaccurate tax reform, thousand of taxpayers do that innocently, " Lurding v. United States, 179 F. 2d 419, 422 (6th cir 1950)

This Honoarable Court has held and rightfully so one who acts under a mistake of fact acts neither willfully nor knowingly, Felton vs United States 96 U.S. 699, 702, 703, 24 L. Ed. 876 Spurr vs. United States 174 U.S. 728, 43 L. Ed. 1150, 195 ct. 812.

CONCLUSION

For the Foregoing reasons the petition for Writ of Certiorari should be granted.

Respectfully,
Samuel Thomas,Esq.
In Proper Person
P.O. Box 814
209 N. Walnut St.
Tallulah, LA 71282
318-574-4937

Opinion of the United States Court of Appeals for the Fifth Circuit, Dated July 20, 2009...

I. BACKGROUND

Samuel Thomas appeals his conviction on two counts of filing a false tax return, 26 U.S.C. § 7206 (1), and one count of tax evasion, 26 U.S.C. § 7201. Thomas, a self-described country lawyer in Louisiana, employed an assistant, Matra Hamilton, and an accountant, Louis Bradley, to manage his accounts. The false tax return convictions concern his 1999 corporate income tax return, which reported a gross income of $436,850 (as against actual gross income of $1, 231,681), and his 1999 individual tax return, which reported a taxable income of $66,575 despite purchases and disbursements of approximately $310,000 that year. Thomas concedes that his books were not monuments to organization, but denies that is behavior was criminal.

The evasion conviction stems from Thomas' failure to make a particular disclosure during negotiations with the Internal Revenue Service (IRS) regarding overdue tax liability in excess of 4407,000. The negotiations were initiated on grounds of "doubt as to collectability,' i.e., Thomas' inability to pay. At the time, Thomas' law firm was engaged in litigating and mediating a case ("the Wiley matter") it had taken on a contingency fee basis.

Thomas did not disclose in his negotiations with the IRS the possibility that he might receive attorney's fees in the case; following settlement, he received $557,193 for his work on Wiley.

Bradley, the accountant, was tried with Thomas. Both were acquitted of conspiracy to file a false tax return, and Bradley was also acquitted on two counts of aiding and assisting and making and subscribing a false tax return. The district court denied Thomas' motion for a judgment of acquittal.

II. DISCUSSION

On appeal, Thomas challenges (1) the sufficiency of the evidence for all three convictions, (2) the propriety of the deliberate ignorance jury instruction, and (3) the restitution ordered.[1] He conceded the third issue at oral argument; accordingly, we consider only the first two.

---

[1]Thomas also asserted an inconsistent verdict argument below, but does not raise it on appeal except to allude to it in a couple pages of his brief. It is unclear whether this claim is even recognized in this circuit, see United States v. Agofsky, 458 F. 3d 369, 375 (5th Cir. 2006) (quoting United States v. Powell, 469 U.S. 57, 69 (1984), but in any event we deem it waived here. See United States v. Jackson, 426 F. 3d 301, 304 n.2 (5th Cir. 2005) (claims F. 3d 608, 612 n.3 (5th Cir. 200) (inadequately briefed claims are waived).

A. *Sufficiency of the Evidence*

Thomas timely moved for a judgment of acquittal, thus preserving his challenge to the sufficiency of the evidence. Accordingly, we review the denial of that motion denovo. United States v. Harris, 566 F 3d 422, 435 (5th Cir. 2009). "Under this standard, we determine whether a reasonable injury could find that the evidence establishes the guilt of the defendant beyond a reasonable doubt." United States v. Williams, 507 F. 3 905, 908 (5th Cir. 2007). We view the evidence in the light most favorable to the verdict and draw all reasonable inference and credibility choices from the evidence to support the verdict. Harris, 566 F, 3d at 435.

1. Two counts of making and subscribing a false tax return

Thomas as convicted of making and subtracting a false tax return, 26 U.S.C. § 7206(1).[2] He claims that Hamilton, his assistant, dealt with Bradley, and that he was not involved with the preparation of the 1999 corporate an individual returns.

---

[2] The element of the offense are that: (1) a false return was made and signed, (2) the false entry was material, (3) the return contained a written declaration that it was made under the penalties of perjury, (4) the defendant did not believe that the return was true and correct when signed, and (5) that the defendant signed willfully and with specific intent to violate the law. United States v. Bishop, 264 F. 3d 535, 552 (5t Cir. 2001).

Thomas admits he signed both the returns, but maintains he did so without reading them and that he hired Hamilton and Bradley so that he did not have to worry about his taxes an avoid liability.[3] The basis of his sufficiency challenges is that any errors were Bradley's fault, and that nay fault attributable to Thomas were mere negligence.

Considering the significance disparity between the income Thomas reported on his corporate income tax return and his law practice's actual income, and viewing the evidence in the light most favorable to the verdict, the jury was entitled to disbelieve this excuse.

---

[3] The jury was instructed on the defense of good faith reliance on a tax professional. The defense requires (1) full disclosure an (2) goo faith reliance. See, e.g. United States v. Charroux, 3 F. 3d 827, 831(5th Cir. 1993). On appeal, Thomas only aludes to this defense, and not until his reply brief. The Government concedes that Thomas provided Bradley with all of his bank statements, but argues that this disclosure was nevertheless incomplete because Thomas did not provide explanations for the various deposits and expenditures..

One specific incident illuminates, and provides support for, the jury's decision to find that Thomas was not truthful with Bradley. Bradley sent over a draft of the 1999 return in February 2000. Hamilton, Thomas assistant, told Bradley that corporate income was too high and should be adjust downward, Bradley complied. The jury could have reasonably believed that this instruction did not really come from Hamilton, but from Thomas. If the jury so concluded, it would have meant that Thomas failed to fully disclose financial information, which would undermine the first prong of this defense. See id.

In 1999, Thomas' law practice had $1, 231,681 in gross income versus the $436,850 he reported. The fees Thomas receive from the Wiley case alone exceeded the entire amount of corporate gross income he reported that year. (Thomas received checks for his work in the Wiley mater totaling approximately $647,193 in 1999.) In addition, as discussed *supra* at note 3, Bradley testified that he sent drafts of the two returns to Thomas' office in February 2000 and that Hamilton called and stated that Thomas' income was too high on the draft. Bradley testified that he then made some questionable changes to the return, reducing his income and increasing his expenses. He further testified (though Thomas disputed) that Thomas reviewed the tax forms before Bradley submitted them. On this record, the jury was entitled to credit Bradley's version of events over Thomas'.

Regarding Thomas' individual return, the disparity in gross individual income reported is striking. He reported $66,575 in personal income in 1999, but spent approximately $310,000 on personal expenses that year, including expensive gifts for his wife, a $53,000 Lexus for his wife,[4]

---

[4] Thomas claims that the car was a business expense because his wife helped out with his firm. Thomas' and his wife's joint individual return lists Thomas' wife occupation as housewife, not as a firm employee. Even with this purchase Thomas obviously spent more on personal items that he reported in individual gross income.

$50,000 to buy a certificate of deposit and fund a bank account for his wife, gifts to relatives exceeding $22,000, a donation to his church for $25,000. a $5,000 campaign contribution, and other disbursements, including purchases of jewelry, furniture, and electronics.

After reviewing evidence of these purchases and the circumstances of Thomas' filing his tax return, the jury was entitled to reject Thomas' claim that he simply never looked at this returns before signing them. Because the jury apparently concluded that Thomas was at a minimum aware of the gross income he reported, the jury could also have been justified in concluding that Thomas knew (or was deliberately ignorant) that this figure was far to low considering corporate revenue and personal expenditures.

In sum, a rational jury could have concluded beyond a reasonable doubt that Thomas knew how much money his business was making and that he misreported that figure willfully and with specific intent to violate the law.

2. Evasion count[5]

a. *Relevant facts*

In 1994, Thomas pled guilty to two counts of failing timely to file several tax returns.

---

[5] 26 U.S.C. § 7201. The elements of events ae (1) willfulness, (2) the existence of a tax deficiency, and (3) an affirmative act constituting an evasion or an attempted evasion of the tax. United States v. Nolen, 472 F. 3d 3622, 377 9 (5th Cir. 2006).

On December 7, 1995, he was released from prison and served the remainder of his sentence in a half-way house. He still owed the IRS $407,000 for unpaid taxes. At some point, he took on the *Wiley* matter mentioned above, a personal injury case in which he represented Draina Wiley in a suit against Traditional Trucking (his license to practice law had not yet been suspended). Thomas engaged the help of three other lawyers, and the four of them entered a contingency fee agreement with Wiley for forty percent of any recovery, which the lawyers agreed to divide evenly

The suit was filed on November 5, 1996, and in May 1997, Producers Feed Company was added as another defendant. On August 20, 1997, Traditional Trucking agreed to a $900,000 settlement, but at the last minute, attempted to add an additional term with Producers Feed Company also be released from liability. Wiley refused an litigated the settlement agreement. On November 21, 1997, the defendant's suspension from the practice of law began.

On November 23, 1997, Thomas wrote the IRS to explain that his bar license was being suspended and that he would not be able to make the payments on his outstanding $407,000 tax liability.

He claimed that friends were willing to lend him $43,000, but only if that would extinguish the entire liability. This letter began the offer in compromise (OIC) process. On January 14, 1998, a complying OIC was submitted, which included the required Form 656. An additional OIC was submitted on September 10, 1998, with an addendum on February 25, 1999. As the reason for submitting the OIC, each form has checked "doubt as to collectibility," i.e., insufficient assets to pay the outstanding tax liability of $407,000.

An OIC also requires forms 433-A and 433-B, information statements for individuals and businesses respectively. Thomas submitted his 433-A dated April 8, 1998, which he updated on September 23, 1998. Thomas never signed this form; Bradley did. This form asks about anticipated increases in income, and the "no" box is checked. The form also inquires about court proceedings. The "yes" box is checked, but the IRS agent responsible testified that the only lawsuit disclosed to him was a suit between Thomas and some family members over an estate–not the Wiley matter.

Thomas' 433-B is dated November 25, 1997, and was updated December 31, 1998. He signed this form, but it is not clear who updated it.

(The updates are penciled-in, and the signature block is initialed.) The form asks for " additional financial information regarding financial condition." Thomas merely states that the firm is current on its tax liabilities.

On August 25, 1998, Wiley prevailed on summary judgment. This ruling meant the $900,000 settlement agreement with Traditional Trucking, if upheld on appeal, was enforceable and that Thomas would receive a quarter of the fort-percent contingency fee, or $90,000.[6] However, none of the documents Thomas submitted after August 25, 1998, included any reference to this potential, and substantial, increase in income. The relevant documents are : (1) the updated 1998, (3) the amended OIC, filed September 10, 1998, and (4) the addendum to the OIC, filed February 25, 1999.

Thomas also never disclosed the possibility of settlement with Producers Feed Company. On February 11, 1999, Producers Feed Company offered to settle for $1.5 million, which was rejected. Nevertheless, the OIC addendum, dated February 25, 1999, did not mention a possible increase in income. The case went to mediation, and on March 31, 1999, the defendant received $557,193 in attorney fees from a settlement with Producers Feed Company.

---

[6] It took approximately one year for Thomas to receive payment. The check he received was dated August 31, 1999.

Thomas neither updated his LIC or his 433 forms to reflect the settlements, nor informed the IRS of the settlements in any way. On April 27, 1999. the IRS, unaware of the settlement, accepted Thomas' offer of compromise. The compromise agreement states. 'Based upon the taxpayer's projected future income, the service (IRS) believes collection of the remaining liability is in doubt."

On May 4, 1999, Thomas borrowed money from Cross Keys bank to pay the $43,000. Just a month earlier he was issued a check for over $550,000 for the Producers Feed Company settlement.

On December 2, 2002, Thomas answered questions from an IRS agent in a letter. Among these answers, Thomas denied having any involvement in the Wiley matter. According to the Government, evidence of Thomas' involvement in the suit consisted of (1) paying investigators, (2) representing to Traditional Trucking in writing that he represented Wiley, and (3) writing to Producers Feed Company's counsel regarding a prior meeting and a potential future settlement. All of this allegedly occurred before Thomas' license was suspended on OIC. Thomas also corresponded with one of Wiley's other attorneys on December 18, 1998 and complimented him on his handling of the case.

In these responses, Thomas also claimed that he provided Bradley with the information for the 433-A. In addition, he claimed that the fees from the Wiley case were reflected in his returns. Thomas wrote that he answered all questions truthfully according to his knowledge at the time.

b. Discussion

Thomas' argument on the evasion conviction is essentially two-fold. First, he did not sign the 433-A and therefore cannot be liable for any of his accountant's misrepresentations. Second, he claims that he did not know the status of the Wiley case and honestly doubted its outcome. In essence, he claims that he had not duty to update his initial, truthful disclosures.

The Government disputes these claims. It maintains that even if the forms themselves were truthful, the disclosures in the December 2, 2002, letter were untruthful, and therefore acts of evasion. The Government further contends that obtaining the bank loan was an act of evasion intended to conceal Thomas's recent receipt of substantial assets. Finally, the Government argues that the false tax returns themselves could have been an attempt to hide assets to avoid paying the outstanding $407,00 liability.[7]

[7] The Government also disputes Thomas' contention that he had no duty to update his initial disclosures once circumstances changed, but briefed no argument on that point. We need not reach this issue, however, because without it there remains sufficient evidence in the record on which the jury could have found evasion.

The evidence adduced at trial was substantial. Based on the record evidence, including that recounted above— namely, Thomas' failure to disclose the Wiley matte in his 433-A and 433-B, including in the updated versions of these documents submitted after his client in Wiley prevailed in her fight to enforce a prior settlement against one party, and after the other party proposed a settlement that would yield Thomas hundred of thousands of dollars; the OIC addendum Thomas submitted after these developments that made no mention of them; the bank loan he secured, giving the impression that he was short on cash; and his denial of involvement with the Wiley matter— a reasonable jury could conclude beyond a reasonable doubt that Thomas committee evasion.

B. *Deliberate Ignorance Instruction*

1. Standard of review and applicable law

Thomas claims there was insufficient factual basis to justify giving a deliberate ignorance instruction. Such an instruction is justified where "the evidence shows (1) subjective awareness of a high probability of the existence of illegal conduct and (2) purposeful contrivance to avoid learning of the illegal conduct." United States v. Nguyen, 493 F. 3d 613, 619 (6th Cir. 2007) (internal quotation marks and citation omitted). Because Thomas objected to this instruction at trial, this court reviews its propriety for abuse of discretion. Id.

2. Discussion

As an initial matter, the deliberate ignorance instruction pertains to "knowledge," which is not an element of evasion. The instruction, therefore, only properly pertains to the two counts of filing a false tax return. Thomas' argument in his opening brief is cursory. He argues, again that he hired Bradley to avoid these problems and therefore did not intend to violate the law.

That motivation and conduct do not negate the justification for giving a deliberate ignorance instruction under Nguyen. 493 F.3d at 618 (instruction appropriate where defendant subjectively aware if high probability of illegal conduct and engaged in purposeful contrivance to avoid learning of the illegal conduct).

Further, sufficient evidence existed to support the instruction. First, the evidence supports a "subjective awareness of a high probability of the existence of illegal conduct.' Id. Thomas ha first-hand knowledge that his personal and corporate gross income exceeded the reported gross income. Regarding corporate liabilities, Thomas clearly knew of the Wiley case's settlement and of his fees for $647,193, an amount exceeding his firm's reported gross income of $436,850.

Bradley also testified that Thomas told him that Thomas kept a running log of the financial status of each case; therefore, Thomas had a sense of how much money his clients owed, which suggests knowledge of his firm's finances. Thomas made roughly $310,000 in personal expenditures in 1999. He very likely knew these purchases and various checks were greater than his reported gross personal income of $66,575. Moreover, in November 1999, Thomas submitted a financial statement to Cross Keys bank on which he listed his income as 200,000. This strongly suggested that Thomas knew both his corporate and individual gross incomes were larger that those reported—the "subjective awareness of a high probability of the existence of illegal conduct" that is the first prerequisite of a deliberate ignorance instruction. Id.

The evidence also supports finding the second prerequisite, "purposeful contrivance to avoid learning of the illegal conduct." *Id.* Thomas notes in his own brief his testimony that "he wanted to sign whatever Mr. Bradley placed in front of him."Also, Bradley was asked to discontinue sending monthly reports to Thomas, suggesting deliberate ignorance Thomas' uncritical reliance on Bradley and his assistant, Hamilton, was more than enough evidence to support a jury instruction for deliberate ignorance regarding the first two counts of filing a false tax return.

The trial court did not abuse its discretion by giving the instruction. *See United States v. Bieganowski*, 313 F. 3d 264,290-291 (5th Cir. 2002) (finding no abuse of discretion where a "jury could certainly infer from the{e} evidence that [defendant] could have been aware of the presence of fraud, but instead deliberately closed his eyes to it.").

III CONCLUSION

For the reasons set forth above, the judgment of the district court is AFFIRMED as to all counts